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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,000	03/31/2004	Chunlin Yang	DEP-5286	1332
27777	7590	03/10/2009		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER KAM, CHIH MIN	
			ART UNIT 1656	PAPER NUMBER
			MAIL DATE 03/10/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/815,000

Applicant(s)

YANG ET AL.

Examiner

CHIH-MIN KAM

Art Unit

1656

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-14.
Claim(s) withdrawn from consideration: 15-23.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Chih-Min Kam/
Primary Examiner, Art Unit 1656

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of 1-14 under 35 U.S.C. 112, second paragraph.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's reply does not overcome the rejection of claims 1-6, 8, 9, 11, 12 and 14 under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al. (U.S. 2002/0183855; see pages 4-5 of Office Action dated 8/4/08); and the rejection of claims 1, 6, 7, 10 and 13 as being unpatentable over Yamamoto et al. (U.S. 2002/0183855) in view of Silver et al. (U.S. Patent 5,532,2170) (see pages 5-6 of Office Action dated 8/4/08). In the amendment filed 2/4/09, claims 1 and 4 have been amended.

Applicants indicate claim 1 has been amended to clarify the claimed composition is "flowable", and Yamamoto does not teach a flowable composition. Yamamoto discloses a composition with "a compressible shape memory" (see [0056]). The matrix maintains its integrity and shape after hydration. The hydrated matrix can be compressed and manually inserted through a narrow opening but returns to its original size and shape on rehydration. Whereas, the claimed invention is not compressed in order to flow through the cannula. Therefore, Yamamoto does not teach or suggest the claimed invention. Regarding the obviousness rejection, applicants indicate Yamamoto does not anticipate nor render obvious the claimed invention as argued. Applicants further submit that Silver et al. does not remedy the defects of Yamamoto. Thus, the combination of these references does not arrive at Applicants' claimed invention. Therefore, the rejection should be withdrawn.

Applicants' response has been fully considered, however, the arguments are not found persuasive because of the following reasons. Yamamoto et al. teach the mineralized collagen matrix can be easily hydrated by placing the matrix in fluid, and the matrix maintains its integrity and shape after hydration (paragraph [0056]). Yamamoto et al. also indicate the matrix can be compressed into a delivery vehicle such as a cannula and the delivery vehicle can be introduced at the site of desired tissue growth (paragraph [0034]). Applicants argue that the claimed invention is not compressed in order to flow through the cannula, however, the specification recites "the term flowable is used herein to denote that physical state where the compositions will flow upon application of force required to administer such composition through a cannula of a medical device as device as described herein below" (page 5, line 25, to page 6, line 1). Since both the instant application and Yamamoto et al. teach the composition contains the same materials and can be delivered through a cannula upon application of force to administer such composition, thus, the composition taught by Yamamoto et al. is not different from the claimed composition. Therefore, the 102 (b) rejection is maintained.

Regarding the obviousness rejection, Yamamoto et al. teach the composition described above, and Silver et al. teach a bone replacement structure that has demineralized matrix, where the collagen fibers can have diameters of less than a micron and up to several millimeters, where the teachings of Silver et al. would remedy the defects of Yamamoto as indicated in the previous Office Action. Therefore, the rejection is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (571) 272-0948. The examiner can normally be reached on 8.00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached at 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Chih-Min Kam/
Primary Patent Examiner

CMK
March 9, 2009